

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CHRISTIAN SAULNIER,

Plaintiff,

v.

SPREADSHIRT, INC.; and DOES 1  
through 20, inclusive,

Defendants.

Case No. 2:15-cv-08455-FMO-RAO

**PROTECTIVE ORDER**

Complaint Filed: August 31, 2015

Trial Date: October 4, 2016

District Judge: Hon. Fernando M.  
Olguin

Magistrate Judge: Hon. Rozella A.  
Oliver

**1. A. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation maybe warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

1                   **B.     GOOD CAUSE STATEMENT**

2           This action is likely to involve trade secrets, customer and pricing lists and  
3 other valuable research, development, commercial, financial, technical and/or  
4 proprietary information for which special protection from public disclosure and  
5 from use for any purpose other than prosecution of this action is warranted. Such  
6 proprietary materials and information include, but are not limited to: (1)  
7 confidential business or financial information, (2) confidential and proprietary  
8 customer and/or pricing lists, (3) information regarding confidential business  
9 practices, (4) other confidential research, development, or commercial information  
10 (including information implicating privacy rights of third parties), (5) Plaintiff's  
11 personal health information, including, without limitation, Plaintiff's medical  
12 records, and other information otherwise generally unavailable to the public, or  
13 which may be privileged or otherwise protected from disclosure under state or  
14 federal statutes, court rules, case decisions, or common law.

15           Good cause exists to protect the good faith designation of such categories of  
16 information as identified above, as prejudice or harm to either or both parties  
17 and/or to one or more third parties may result if not protective order is granted. To  
18 illustrate, Defendant's competitors may be able to use such confidential and/or  
19 proprietary business information to obtain an unfair competitive advantage.  
20 Additionally, the privacy rights of Plaintiff and other third parties may be violated  
21 in absence of a protective order. As such, the parties collectively seek to avoid  
22 undue economic, personal, or other potential harm to the parties.

23           Accordingly, to expedite the flow of information, to facilitate the prompt  
24 resolution of disputes over confidentiality of discovery materials, to adequately  
25 protect information the parties are entitled to keep confidential, to ensure that the  
26 parties are permitted reasonable necessary uses of such material in preparation for  
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1 and in the conduct of trial, to address their handling at the end of the litigation, and  
 2 serve the ends of justice, a protective order for such information is justified in this  
 3 matter. It is the intent of the parties that information will not be designated as  
 4 confidential for tactical reasons and that nothing be so designated without a good  
 5 faith belief that it has been maintained in a confidential, non-public manner, and  
 6 there is good cause why it should not be part of the public record of this case.

7 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING**  
 8 **UNDER SEAL**

9 The parties further acknowledge, as set forth in Section 12.3, below, that this  
 10 Stipulated Protective Order does not entitle them to file confidential information  
 11 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed  
 12 and the standards that will be applied when a party seeks permission from the court  
 13 to file material under seal.

14 There is a strong presumption that the public has a right of access to judicial  
 15 proceedings and records in civil cases. In connection with non-dispositive motions,  
 16 good cause must be shown to support a filing under seal. *See Kamakana v. City*  
 17 *and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*  
 18 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*  
 19 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective  
 20 orders require good cause showing), and a specific showing of good cause or  
 21 compelling reasons with proper evidentiary support and legal justification, must be  
 22 made with respect to Protected Material that a party seeks to file under seal. The  
 23 parties' mere designation of Disclosure or Discovery Material as  
 24 CONFIDENTIAL does not— without the submission of competent evidence by  
 25 declaration, establishing that the material sought to be filed under seal qualifies as  
 26 confidential, privileged, or otherwise protectable—constitute good cause.

Further, if a party requests sealing related to a dispositive motion or trial, then compelling reasons, not only good cause, for the sealing must be shown, and the relief sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal in connection with a dispositive motion or trial, the party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

## 2. **DEFINITIONS**

2.1 **Action**: the instant pending federal lawsuit, entitled *Christian Saulnier v. Spreadshirt, Inc., et al.*, Case No. 2:15-cv-08455-FMO-RAO, currently pending in the United States District Court for the Central District of California.

2.2 **Challenging Party**: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 **"CONFIDENTIAL" Information or Items**: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 **Counsel**: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 **Designating Party**: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.6 **Disclosure or Discovery Material**: all items or information, regardless

1 of the medium or manner in which it is generated, stored, or maintained (including,  
 2 among other things, testimony, transcripts, and tangible things), that are produced  
 3 or generated in disclosures or responses to discovery in this matter.

4 2.7 Expert: a person with specialized knowledge or experience in a matter  
 5 pertinent to the litigation who has been retained by a Party or its counsel to serve  
 6 as an expert witness or as a consultant in this Action.

7 2.8 House Counsel: attorneys who are employees of a party to this Action.  
 8 House Counsel does not include Outside Counsel of Record or any other outside  
 9 counsel.

10 2.9 Non-Party: any natural person, partnership, corporation, association,  
 11 or other legal entity not named as a Party to this action.

12 2.10 Outside Counsel of Record: attorneys who are not employees of a  
 13 party to this Action but are retained to represent or advise a party to this Action  
 14 and have appeared in this Action on behalf of that party or are affiliated with a law  
 15 firm which has appeared on behalf of that party, and includes support staff.

16 2.11 Party: any party to this Action, including all of its officers, directors,  
 17 employees, consultants, retained experts, and Outside Counsel of Record (and their  
 18 support staffs).

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
 20 Discovery Material in this Action.

21 2.13 Professional Vendors: persons or entities that provide litigation  
 22 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or  
 23 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
 24 and their employees and subcontractors.

25 2.14 Protected Material: any Disclosure or Discovery Material that is  
 26 designated as "CONFIDENTIAL."

1           2.15 Receiving Party: a Party that receives Disclosure or Discovery  
2 Material from a Producing Party.

3           **3. SCOPE**

4           The protections conferred by this Stipulation and Order cover not only  
5 Protected Material (as defined above), but also (1) any information copied or  
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
7 compilations of Protected Material; and (3) any testimony, conversations, or  
8 presentations by Parties or their Counsel that might reveal Protected Material.

9           Any use of Protected Material at trial shall be governed by the orders of the  
10 trial judge. This Order does not govern the use of Protected Material at trial.

11           **4. DURATION**

12           Once a case proceeds to trial, information that was designated as  
13 CONFIDENTIAL or maintained pursuant to this protective order used or  
14 introduced as an exhibit at trial becomes public and will be presumptively  
15 available to all members of the public, including the press, unless compelling  
16 reasons supported by specific factual findings to proceed otherwise are made to the  
17 trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81  
18 (distinguishing “good cause” showing for sealing documents produced in  
19 discovery from “compelling reasons” standard when merits-related documents are  
20 part of court record). Accordingly, the terms of this protective order do not extend  
21 beyond the commencement of the trial.

22           **5. DESIGNATING PROTECTED MATERIAL**

23           5.1 Exercise of Restraint and Care in Designating Material for Protection.  
24 Each Party or Non-Party that designates information or items for protection under  
25 this Order must take care to limit any such designation to specific material that  
26 qualifies under the appropriate standards. The Designating Party must designate for  
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1 protection only those parts of material, documents, items, or oral or written  
2 communications that qualify so that other portions of the material, documents,  
3 items, or communications for which protection is not warranted are not swept  
4 unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations  
6 that are shown to be clearly unjustified or that have been made for an improper  
7 purpose (*e.g.*, to unnecessarily encumber the case development process or to  
8 impose unnecessary expenses and burdens on other parties) may expose the  
9 Designating Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it  
11 designated for protection do not qualify for protection, that Designating Party must  
12 promptly notify all other Parties that it is withdrawing the inapplicable designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in  
14 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise  
15 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
16 under this Order must be clearly so designated before the material is disclosed or  
17 produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (*e.g.*, paper or electronic  
20 documents, but excluding transcripts of depositions or other pretrial or trial  
21 proceedings), that the Producing Party affix at a minimum, the legend  
22 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
23 contains protected material. If only a portion or portions of the material on a page  
24 qualifies for protection, the Producing Party also must clearly identify the  
25 protected portion(s) (*e.g.*, by making appropriate markings in the margins).

26 A Party or Non-Party that makes original documents available for inspection  
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1 need not designate them for protection until after the inspecting Party has indicated  
 2 which documents it would like copied and produced. During the inspection and  
 3 before the designation, all of the material made available for inspection shall be  
 4 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
 5 documents it wants copied and produced, the Producing Party must determine  
 6 which documents, or portions thereof, qualify for protection under this Order.  
 7 Then, before producing the specified documents, the Producing Party must affix  
 8 the "CONFIDENTIAL legend" to each page that contains Protected Material. If  
 9 only a portion or portions of the material on a page qualifies for protection, the  
 10 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making  
 11 appropriate markings in the margins).

12 (b) for testimony given in depositions that the Designating Party identify the  
 13 Disclosure or Discovery Material on the record, before the close of the deposition  
 14 all protected testimony.

15 (c) for information produced in some form other than documentary and for  
 16 any other tangible items, that the Producing Party affix in a prominent place on the  
 17 exterior of the container or containers in which the information is stored the legend  
 18 "CONFIDENTIAL." If only a portion or portions of the information warrants  
 19 protection, the Producing Party, to the extent practicable, shall identify the  
 20 protected portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 22 failure to designate qualified information or items does not, standing alone, waive  
 23 the Designating Party's right to secure protection under this Order for such  
 24 material.

25 Upon timely correction of a designation, the Receiving Party must make  
 26 reasonable efforts to assure that the material is treated in accordance with the  
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provisions of this Order.

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 *et seq.*

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless

1 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
2 Receiving Party may disclose any information or item designated  
3 “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well  
5 as employees of said Outside Counsel of Record to whom it is reasonably  
6 necessary to disclose the information for this Action;

7 (b) the officers, directors, and employees (including House Counsel) of the  
8 Receiving Party to whom disclosure is reasonably necessary for this Action;

9 (c) Experts (as defined in this Order) of the Receiving Party to whom  
10 disclosure is reasonably necessary for this Action and who have signed the  
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (d) the Court and its personnel;

13 (e) Court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and Professional  
15 Vendors to whom disclosure is reasonably necessary for this Action and who have  
16 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (g) the author or recipient of a document containing the information or a  
18 custodian or other person who otherwise possessed or knew the information;

19 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
20 Action to whom disclosure is reasonably necessary provided: (1) the deposing  
21 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)  
22 they will not be permitted to keep any confidential information unless they sign the  
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
24 agreed by the Designating Party or ordered by the court. Pages of transcribed  
25 deposition testimony or exhibits to depositions that reveal Protected Material may  
26 be separately bound by the court reporter and may not be disclosed to anyone  
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except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel mutually agreed upon by any of the parties engaged in settlement discussions.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

1 (a) The terms of this Order are applicable to information produced by a Non-  
2 Party in this Action and designated as “CONFIDENTIAL.” Such information  
3 produced by Non-Parties in connection with this litigation is protected by the  
4 remedies and relief provided by this Order. Nothing in these provisions should be  
5 construed as prohibiting a Non-Party from seeking additional protections.

6 (b) In the event that a Party is required, by a valid discovery request, to  
7 produce a Non-Party’s confidential information in its possession, and the Party is  
8 subject to an agreement with the Non-Party not to produce the Non-Party’s  
9 confidential information, then the Party shall:

10 (1) promptly notify in writing the Requesting Party and the Non-Party  
11 that some or all of the information requested is subject to a confidentiality  
12 agreement with a Non-Party;

13 (2) promptly provide the Non-Party with a copy of the Stipulated  
14 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
15 specific description of the information requested; and

16 (3) make the information requested available for inspection by the  
17 Non-Party, if requested.

18 (c) If the Non-Party fails to seek a protective order from this Court within  
19 fourteen (14) days of receiving the notice and accompanying information, the  
20 Receiving Party may produce the Non-Party’s confidential information responsive  
21 to the discovery request. If the Non-Party timely seeks a protective order, the  
22 Receiving Party shall not produce any information in its possession or control that  
23 is subject to the confidentiality agreement with the Non-Party before a  
24 determination by the court. Absent a court order to the contrary, the Non-Party  
25 shall bear the burden and expense of seeking protection in this court of its  
26 Protected Material.  
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1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has  
 3 disclosed Protected Material to any person or in any circumstance not authorized  
 4 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
 5 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
 6 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
 7 the person or persons to whom unauthorized disclosures were made of all the terms  
 8 of this Order, and (d) request such person or persons to execute the  
 9 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
 10 A.

11 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
 12 **OTHERWISE PROTECTED MATERIAL**

13 When a Producing Party gives notice to Receiving Parties that certain  
 14 inadvertently produced material is subject to a claim of privilege or other  
 15 protection, the obligations of the Receiving Parties are those set forth in Federal  
 16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
 17 whatever procedure may be established in an e-discovery order that provides for  
 18 production without prior privilege review. Pursuant to Federal Rule of Evidence  
 19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
 20 of a communication or information covered by the attorney-client privilege or  
 21 work product protection, the parties may incorporate their agreement in the  
 22 stipulated protective order submitted to the court.

23 **12. MISCELLANEOUS**

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
 25 person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
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1 Protective Order no Party waives any right it otherwise would have to object to  
 2 disclosing or producing any information or item on any ground not addressed in  
 3 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
 4 any ground to use in evidence of any of the material covered by this Protective  
 5 Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any  
 7 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
 8 may only be filed under seal pursuant to a court order authorizing the sealing of the  
 9 specific Protected Material at issue. If a Party's request to file Protected Material  
 10 under seal is denied by the court, then the Receiving Party may file the information  
 11 in the public record unless otherwise instructed by the court.

### 12 **13. FINAL DISPOSITION**

13 After the final disposition of this Action, as defined in paragraph 4, within  
 14 sixty (60) days of a written request by the Designating Party, each Receiving Party  
 15 must return all Protected Material to the Producing Party or destroy such material.  
 16 As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
 17 compilations, summaries, and any other format reproducing or capturing any of the  
 18 Protected Material. Whether the Protected Material is returned or destroyed, the  
 19 Receiving Party must submit a written certification to the Producing Party (and, if  
 20 not the same person or entity, to the Designating Party) by the 60 day deadline that  
 21 (1) identifies (by category, where appropriate) all the Protected Material that was  
 22 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
 23 copies, abstracts, compilations, summaries or any other format reproducing or  
 24 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
 25 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
 26 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
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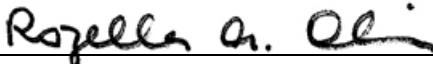
1 and trial exhibits, expert reports, attorney work product, and consultant and expert  
2 work product, even if such materials contain Protected Material. Any such archival  
3 copies that contain or constitute Protected Material remain subject to this  
4 Protective Order as set forth in Section 4 (DURATION).

5 **14. VIOLATION**

6 Any intentional violation of this Order may be punished by any and all  
7 appropriate measures including, without limitation, contempt proceedings and/or  
8 monetary sanctions.  
9

10 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.  
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12  
13 DATED: February 1, 2016

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15 Hon. Rozella A. Oliver  
16 United States Magistrate Judge  
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**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
 that I have read in its entirety and understand the Stipulated Protective Order that  
 was issued by the United States District Court for the Central District of California  
 on [date] in the case of *Christian Saulnier v. Spreadshirt, Inc., et al.*, Case No.  
 2:15-cv-08455-FMO-RAO. I agree to comply with and to be bound by all the  
 terms of this Stipulated Protective Order and I understand and acknowledge that  
 failure to so comply could expose me to sanctions and punishment in the nature of  
 contempt. I solemnly promise that I will not disclose in any manner any  
 information or item that is subject to this Stipulated Protective Order to any person  
 or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District  
 Court for the Central District of California for the purpose of enforcing the terms  
 of this Stipulated Protective Order, even if such enforcement proceedings occur  
 after termination of this action. I hereby appoint \_\_\_\_\_  
 [print or type full name] of \_\_\_\_\_ [print  
 or type full address and telephone number] as my California agent for service of  
 process in connection with this action or any proceedings related to enforcement of  
 this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_